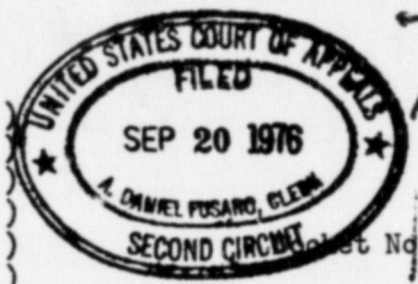
***United States Court of Appeals***

***for the Second Circuit***


# APPELLANT'S SUPPLEMENTAL BRIEF

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SEP 20 1976




76-1210
B
P/S

UNITED STATES OF AMERICA,

Appellee,

-v-

CHARLES RAMSEY,

Appellant.

Docket No. 76-1210

SUPPLEMENTAL BRIEF FOR CHARLES RAMSEY

UNDER TITLE 5 U.S.C., SECTION 701 ET SEQ., APPELLANT RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT OF APPEALS FOR THE SECOND CIRCUIT TO TAKE JUDICIAL NOTICE TO THE QUESTION RAISED IN APPELLANT'S SUPPLEMENTAL BRIEF, PRO-SE, DUE TO THE CONSTITUTIONAL MAGNITUDE OF THE QUESTION PRESENTED, WHICH PROVE BEYOND A REASONABLE DOUBT THAT THIS APPELLANT WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

ISSUE PRESENTED FOR REVIEW

POINT I

DID THE TRIAL COURT ERR WHEN IT ORDERED THE DEFENSE TO REST BEFORE APPELLANT HAD AN OPPORTUNITY TO PRESENT MATERIAL WITNESSES VITAL TO HIS DEFENSE;PARTICULARLY, OVER STRONG OBJECTIONS OF APPELLANT, SUBSEQUENTLY DENYING APPELLANT HIS ABSOLUTE RIGHT TO PRESENT A DEFENSE?

## STATEMENT

On, Monday, March 22, 1976, exa ..ly five (5) court days after the Government rested its case, which the Government had taken approximately eight (8) weeks to present, the Court for reasons of its own ordered the defense to rest. This order was made over the specific and s ..ng objections of Appellant, who had not been given an opportunity to call material witnesses vital to his defense--nor an opportunity to personally take the witness sta.. ..mself--in the exercise of his absolute right to present a defense under the Constitution of the United States.

Please note that the only defendant who was allowed to present a proper defense by calling several witnesses and taking the witness stand himself--PRIOR TO THE COURT ORDERING THE DEFENSE TO REST--was the sole defendant to be acquitted out of twelve defendants on trial.

It is also interesting to note that the transcript (pages 3424-3462)* establishes the fact that the Government, the Court and certain defense counsel were working in agreement to bring the trial to a speedy end without regard for Appellant's Constitutional Right to present a defense.

## POINT I

DID THE TRIAL COURT ERR WHEN IT ORDERED THE DEFENSE TO REST BEFORE APPELLANT HAD AN OPPORTUNITY TO PRESENT MATERIAL WITNESSES VITAL TO HIS DEFENSE;PARTICULARLY, OVER STRONG OBJECTIONS OF APPELLANT, SUBSEQUENTLY DENYING APPELLANT HIS ABSOLUTE RIGHT TO PRESENT A DEFENSE?

*The pages referred to hereafter refers to the Official Transcript.

In UNITED STATES v. NAZZARO, 472 F. 2d 302 (2nd Cir. 1973), this Honorable Court stated:

> "There is simply no handy tool with which to gauge a claim that a judge's conduct improperly has shifted the balance against a defendant. Understandably, we reach a decision in such cases only after the most thorough and careful deliberation. We frankly recognize that appellate review of criminal cases, always a difficult task, becomes even more hazardous when the question presented involves an attack upon the conduct of a judge. The special quandary we face in such cases stems from the fact that "we are not given the benefit of witnessing the juxtaposition of personalities which may help prevent reading too much into 'the cold black and white of a printed record'." UNITED STATES v. GRUNBERGER, 431 F. 2d 1062, 1067 (2nd Cir. 1970). Moreover, appellate review does not take place in a vacuum. We must be mindful of the fact that trials in the district courts are not conducted under the cool and calm conditions of a quiet sanctuary or an ivory tower, and that enormous pressures are placed upon district judges by an ever increasing criminal docket and a demand, expressed in part by Rules of the Second Circuit Judicial Council, for speedier trials of criminal defendants. These pressures can cause even conscientious members of the bench, such as the trial judge in this case, in their anxiety to keep pace with the flood of litigating, to give vent to their frustrations by displaying anger and partisanship, when ordinarily they are able to suppress these characteristics. But gave errors which result in serious prejudice to a defendant cannot be ignored simply because they grow out of difficult conditions. A claim of unfair judicial conduct, under these circumstances, requires a close scrutiny of each tile in the mosaic of the trial so that we can determine whether instances of improper behavior or bias, when considered individually or taken together as a whole, may have reached that point where we can make a safe judgment that the defendant was deprived of the fair trial to which he is entitled. UNITED STATES v. GUGLIELMINI, 384 F. 2d 602, 605 (2nd Cir. 1967).

On page 3427, lines 23-25, the trial Court stated: "I tell you this much: If nobody shows on Monday morning, if there are no witnesses, everybody rests." Unfortunatly, such a statement shows a clear disregard for the Constitutional Rights of Appellant, but more specifically, his Sixth Amendment Right to compulsory process for calling witnesses to testify in his defense.

On page 3429, lines 5-7, the trial Court again expressed its intentions to rest the defense case in response to a defense attorney's suggestion that an instruction to the jury--alerting the jury that subpoenas of witnesses in Washington, D. C., have entailed certain logistic problems not attributable to the defense. The Court stated: "Wait a second. Don't worry about it. If no one is here on Monday, everybody rests."

In CHAMBERS v. MISSISSIPPI, 93 S. Ct. 1045 (1973), the Supreme Court stated:

> "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. Mr. Justice Black, writing for the Court in IN RE OLIVER, 333 U.S. 257, 273, 68 S. Ct. 499, 507, 92 L. Ed. 682 (1948), identified these rights as among the minimum essentials of a fair trial:"
>
> "Aperson's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense--a right to his day in court--are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." (emphasis added)
>
> "See also MORRISSEY v. BREWER, 408 U.S. 471, 488-489, 92 S. Ct. 2593, 2603-2604, 33 L. Ed. 2d 484 (1972); JENKINS v. McKEITHEN, 395 U.S. 411, 428-429, 89 S. Ct. 1843, 1852-1853, 23 L. Ed. 2d 404 (1969); SPECHT v. PATTERSON, 386 U.S. 605, 610, 87 S. Ct. 1209, 1212 18 L. Ed. 2d 326 (1967). Both of these elements of a fair trial are implicated in the present case."

On page 3479, line 3, the trial Court capriciously stated: "All right. Defense rests?" The trial Court again stated on page 3479, line 3: "You have rested whether you like it or not." Appellant thereafter,

on page 3479, line 20-25, addressed the Court: "Your Honor, I don't understand fully about what you are saying that the defense rests, but I am innocent in this case and I would like an opportunity to have my witness in order for me to prove my innocence."

In WASHINGTON v. TEXAS, 388 U.S. 14, 19, 87 S. Ct. 1920, 1923, L. Ed. 2d 1019 (1967), the Supreme Court stated:

> "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecutions' witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." (emphasis added)

See WEBB v. TEXAS, 93 S. Ct. 351 (1972)

On page 3480, lines 1-8, Appellant further stated in response to the Court: "One witness is Cornelia -- Christine -- he (U.S. Attorney) had the name for three weeks and he had the address and telephone number, and he hadn't turned it over to my lawyer, and I certainly don't want to be washed down the drain with everybody else because there is dissension in here between the lawyers, the Court and the Government."

The Supreme Court additionally stated in CHARMBERS v. MISSISSIPPI, supra:

> "Few rights are more fundamental than that of an accused to present witnesses in his own defense, E. g., WEBB v. TEXAS, 409 U.S.

95, 93 S. Ct. 351, 34 L. Ed. 2d 330 (1972); WASHINGTON v. TEXAS, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967); IN RE OLIVER, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948). In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt or innocence."

On page 3481, lines 7-16, Appellant also stated: "You said the Government has cooperated. The Government hasn't made any effort to have my witness here and that has been three weeks. They have been on notice and even today my lawyer -- he just learned the last name. He doesn't even know the address and he has the address. He (U.S. Attorney) admitted in court he didn't file a subpoena, he asked her(a material witness) to come down and advised her at the same time that you have a right not to come down.

"That is certainly not fair in my defense."

In FARETTA v. CALIFORNIA, No. 73-5772, decided June 30, 1975, the Supreme Court reaffirmed the Appellant's Sixth Amendment Right:

"The Sixth Amendment includes a compact statement of the rights necessary to a full defense:

"In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor. . . ."

On page 3579, lines 18-25; page 3580, lines 1-2, Appellant addressed the Court and again brought to the Court's attention that he was being deprived of his right to call a particular witness to prove his innocence--without which he would have absolutely no defense: "Your Honor, If I may,

I would like to ask your Honor to reconsider opening the defense case because I would like to personally present someone which is a material witness here who could be beneficial and helpful and prove my innocence before the jury. And contrary to what the Government says, I would like to make it clear that I have previously requested through counsel names of all material witness, which included Miss Christine Green in the original notice of motion."

In UNITED STATES v. NIXON, 94 S. Ct. 3090 (1974), the Supreme Court stated:

> "The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial of speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense."

Following Appellant's statement to the Court, the Court directed the U.S. Attorney to respond. The U.S. Attorney stated in essence that he didn't care about this Appellant's rights to a fundamentally fair trial--"I want to sum up." The Court attempted to correct the U.S. Attorney by stating on page 3580, line 8: "I don't care what you want."

Thereafter, the U.S. Attorney cleverly changed the Appellant's specific request for Christine Green to Miss Claggett, a witness for another defendant--totally evading, confusing and misleading the Court as to Appellant's witness through the injection of Miss Claggett's

name into the Government's response. "I think if we relied on Miss Claggett to get here, we would be in trouble because I just don't think she is a very reliable person. . . However. . . . I would be willing to stipulate to her testimony, that she recall coming up on a trip, almost exactly as Mr. Matedero stated it, with perhaps a few exception, Judge.

"THE COURT: Can you two guys (Mr. Matedero and the U.S. Attorney) work out a stipulation?" (3580, lines 1-21)

Respectfully, may this Honorable Court please not where the trial Court was intentionally misled when the U. S. Attorney confused the issue by using the name of Miss Claggett, another defendant's witness in this case, in place of Appellant's witness, Christine Green. It's interesting to note that the trial Judge was either confused, or intentionally allowed the U. S. Attorney to get away with this "unconscionable misconduct."

Speaking of "Brady" requests in the recent case of UNITED STATES v. LINDA AGURS, 75-491, 19 CRL (1976, June 24), the Supreme Court said:

> "If the subject matter of such request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecution to respond either by furnishing information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." Supra, at 3161 . (Emphasis added)

See GOLDBERG v. UNITED STATES, decided March 30, 1976, which clearly

establishes that a defendant be afforded all relevant information, which also includes the names and statements of material witness found in the work papers of the Department of Justice.

On page 3485, lines 8-13, the U. S. Attorney again misleads the Court by attempting to throw the entire blame for the missing witness, Christine Green, who was known and indirectly controled by the Government, on the attorney assigned to represent Appellant: "Your Honor, the facts essentially as laid out by Mr. Levner are correct. I only call attention to the fact that reference was made to Christine in Miss Ellis' testimony some two or three weeks ago, and he could have elicited from Miss Ellis the name of Miss Green at that time." The Government may not impair accused's ability to call witnesses in his behalf, UNITED STATES v. BELL, 1974, 506 F. 2d 207, 165 U.S. APP. D.C. 146.

On page 3566, lines 15-25; page 3567, lines 1-2, Appellant's counsel reiterated the importance of Christine Green as a material witness vital to Appellant's defense: "Prior to the closing of defense case, I stated to the Court on a number of occasions, Christine Green was an essential and material witness to the defense of this case. I will produce this afternoon an agent, an investigator that put that house under surveillance. The parties no longer reside at that apartment. That apartment has been empty for two days now and I think since the Government was the last party to speak to that witness, since the Government failed to give me the address, last name or known number of that witness, I think it is fair for me to comment on the failure of the Government to produce that witness for

the trial of this case."

In IN RE OLIVER, 333 U.S. 257 (1948), the Supreme Court reversed, and had this to say:

> "We. . . hold that failure to afford the petitioner a reasonable opportunity to defend himself . . . was a denial of due process of law. . . an opportunity to be heard in his defense--a right to his day in court--are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." U.S., at 273 (emphasis added)

Counsel for Appellant, Mr. Levner, previously advised that there would be no problem in fining the crucial witness, Christine Green, after he had had a conversation with the U.S. Attorney, Mr. Engel, during which the U.SL Attorney assured Mr. Levner that he would locate Miss Green and cause to have a subpoena issued directing her to be present to testify for the Appellant: "Mr. Levner made a request of me yesterday about Christine Green. I am attempting to find out where she is. She is a girl that Miss Ellis testified was present on a trip that she took with Mr. Ramsey up to New York from Washington. I don't know where s he is. The Ellis' phone has been delisted, and Miss Ellis is in a place unknown. I talked to her last night. It slipped my mind. She is supposed to call me back this afternoon." (page 3484, lines 14-22)

Appellant's counsel statement to the court, along with the Government's acknowledge conversation with counsel, clearly show Appellant's desired and needed the testimony of Christine Green, which would have established that Appellant did not, in fact, participated in conspiratorial

acts or conversations during his alleged trip to New York with Ann Ellis and Christine Green, etc.

The record will also show where certain attorneys for the defense were in agreement with the U.S. Attorney and the Court to bring the entire trial to a speedy end on Monday morning, regardless whether or not material witnesses for this Appellant testified: "Mr. Goldberger: May I inquire as to the schedule for Monday morning? It is my understanding we will finish this case some time Monday morning."(page 3460, line 25; page 3461, lines 1-4) "Mr. Ciampa: I know you want us all to rest on Monday."(page 3471, lines 12-13).

Under the particular and extraordinary circumstances of this case, the exclusion of Christine Green destroyed the fundamental fairness essential to due process in the conduct of a criminal trial. See. FERGUSON v. GEORGIA, 365 U.S. 570, 81 S. Ct. 756, 5 L. Ed. 2d 783 (1961); BLACKBURN v. ALABAMA, 361 U.S. 199. For the origin of the "fundamental fairness" language see LISENBA v. CALIFORNIA, 314 U.S. 219, 236, 62 S. Ct. 280, 86 L. Ed. 166, 180 (1941).

Because Appellant realize his Supplemental Brief, pro-se, might be inartfully drafted according to the high standards required by this Court, Appellant respectfully reminds the Court of the decision rendered in HAINES v. KERNER, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

## CONCLUSION

For the above stated reasons taken individually and collectively with those reasons stated in his brief submitted by counsel, Appellant prays that this Honorable Court will reverse the judgment below and grant his Motion for a Directed Verdict of Acquittal.

Appellant further prays this Honorable Court consider the entire substance of his appeal so that he may receive that which is JUST and RIGHT according to law.

Respectfully submitted,

/s/ Charles W. Ramsey
CHARLES W. RAMSEY, Appellant
Box PMB #97512-131
Atlanta, Ga. 30315

## CERTIFICATE OF SERVICE

I, CHARLES W. RAMSEY, have this 14th day of September 1976 caused to be mailed, certified, the original and three (3) readable copies of the foregone pro-se Supplemental Brief to: Office of the Clerk, Second Circuit, 15 Foley Square, U. S. Court of Appeals, New York, New York 10007; with one copy duly marked for service on the United States Assistant Attorney, Mr. Thomas E. Engel, handling the above entitled case.

STATE OF GEORGIA)
) ss:
COUNTY OF FULTON)

SUBSCRIBED and SWORN to before me this 14th day of September 1976.

/s/ Carl L. Dell
U. S. PAROLE OFFICER

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

SEP 20 1976

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Appellee, | ) | |
| | ) | |
| -v- | ) | Docket No. 76-1210 |
| | ) | |
| CHARLES RAMSEY, | ) | |
| | ) | |
| Appellant. | ) | |

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now the Appellant, CHARLES RAMSEY, proceeding pro-se, who respectfully moves this Honorable Court, pursuant to Title 28 U.S.C.A., Section 1915, for permission to proceed in forma pauperis in filing the attached pro-se Supplemental Brief and Affidavit of Poverty in support of such is attached hereto.

Respectfully submitted,

/s/ Charles W. Ramsey

CHARLES W. RAMSEY, Appellant
Box PMB #97512-131
Atlanta, Ga. 30315

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, Appellee, -v- CHARLES RAMSEY, Appellant. | ) | Docket No. 76-1210 |

APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
WITH AFFIDAVIT OF POVERTY

Comes now the Affiant/Appellant, CHARLES RAMSEY, proceeding pro-se, and after being first duly sworn, according to law, who deposes and says:

1. That he is a citizen of the United States.

2. That because of his poverty he is unable to pay the cost of the instant cause of action or give security for same.

3. That he is a pauper within the meaning of the law (ADKINS v. DuPONT, 335 U.S. 331).

4. That he seeks redress in GOOD FAITH to obtain the relief to which he verily believes he is entitled.

WHEREFORE, it is respectfully requested that this Honorable Court grant leave to proceed in forma pauperis, for otherwise an injustice shall occur and Affiant/Appellant will be foreclosed relief by reason of his inability to pay the cost thereof.

Respectfully submitted,

/s/ Charles W. Ramsey
CHARLES W. RAMSEY, Appellant
Box PMB #97512-131
Atlanta, Ga. 30315

CERTIFICATE OF SERVICE

I, CHARLES W. RAMSEY, have this 14th day of September 1976 caused to be mailed, certified, the original and three (3) readable copies of the foregone pro-se Application For Leave To Proceed In Forma Pauperis to: Office of the Clerk, Second Circuit, 15 Foley Square, U. S. Court of Appeals, New York, New York 10007; with one copy duly marked for service on the United States Assistant Attorney, Mr. Thomas E. Engel, handling the above entitled case.

STATE OF GEORGIA)
) ss:
COUNTY OF FULTON)

SUBSCRIBED and SWORN to before me this 14th day of September 1976.

/s/ [illegible]
U. S. PAROLE OFFICER

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).